

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 2002-08

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-102-02

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED

Secretary of State
Filing Data

**For Filing
Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

Brief description of action: **Petition 2002-08 (LCB R102-02)** is a permanent amendment to NAC 445B.737 to 445B.774, the vehicle emission control program. The amendments tighten the heavy-duty motor vehicle opacity standards; requires equipment to have the built-in capacity to adjust for altitude and ambient conditions; increases the number of model years to which the standards are applicable; exempts those engine families that have been exempted by California and requires vehicle owners to replace missing emission control labels. The amendments also clarify wavier provisions and align the heavy-duty gasoline vehicle tampering provisions with the existing Nevada annual emission program. Amended is NAC 445B.739, 445B.7665, 445B.767, 445B.768, and 445B.774. NAC 445B.7655 is repealed.

Authority citation other than 233B: NRS 445B.780.

Notice date: August 7, August 12, August 14, August 20, August 21, August 27, 2002

Hearing date: September 11, 2002

Date of Adoption of Agency: September 11, 2002

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 2002-08 LCB File R-102-02
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B. This regulation deals with amendments to the heavy duty diesel emission control program.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 2002-08 (LCB File R-102-02), was noticed on August 7, August 12, August 14, August 20, August 21, August 27, 2002 as a permanent regulation in the Las Vegas Review Journal and the Reno-Gazette-Journal newspapers. Regulatory workshops were conducted by the Nevada Division of Environmental Protection's Bureau of Air Quality Planning on August 8, in Las Vegas and August 14, 2002 in Reno. The regulation was adopted by the State Environmental Commission as a permanent regulation on September 11, 2002. There was no public comment or written testimony received by the Commission during permanent adoption. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308, or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	45
(b)	Testified at each hearing:	1
(c)	Submitted to the agency written comments:	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices and public workshops. At the Commission hearing of September 11, 2002, comment supporting the regulation was received from the Nevada Motor Transport Association. No written comment was received at the hearing. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308 or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted by the State Environmental Commission on September 11, 2002 without request for amendment.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Estimated economic effect of the regulation on the business which it is to regulate;

These amendments will have an economic impact on the owners of heavy-duty motor vehicles. The average cost to repair a heavy-duty vehicle that has failed the current opacity standard is \$676.00, and based upon 2000 and 2001 information approximately 166 vehicles would fail, costing the regulated community about \$112,216.00 annually. This amount would diminish as vehicles are kept in better operating condition. Owners of heavy-duty vehicles will see a reduction on fuel consumption and better vehicle reliability.

(b) Estimated economic effect on the public;

The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public

6. The estimated cost to the agency for enforcement of the adopted regulation.

The implementation of the proposed regulation is not expected to result in any additional cost by the Division of Environmental Protection for enforcement, although the Department of Motor Vehicles will see an annual cost of \$ 33,000.00 for staff and equipment.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more restrictive or stringent than federal requirements.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for any new or increased fees.

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**FILED PERMANENT REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R102-02 SEC Petition 2002-08

Effective October 18, 2002

Explanation: Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-11, NRS 445B.780.

Section 1. Chapter 445B of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the owner of a heavy-duty motor vehicle powered by a diesel engine receives written notification from the department that the emission control label was missing during an inspection of the emission control system of the vehicle, the owner shall replace the emission control label and provide the identification number of the engine of the vehicle to the department within 30 days after the date on which the owner receives the written notification.

2. If, after the end of the 30-day period, the vehicle undergoes a smoke opacity test and the owner has not replaced the emission control label, the vehicle is subject to the 40 percent standard of opacity set forth in subsection 1 of NAC 445B.7665 unless, at the time of the subsequent test, it is plainly evident from a visual inspection that the vehicle is powered by a 1990 or older model-year engine. If it is plainly evident from a visual inspection that the vehicle is powered by a 1990 or older model-year year engine, the vehicle is subject to the applicable standard set forth in paragraph (b) or (c) of subsection 1 of NAC 445B.7665.

Sec. 2. NAC 445B.737 is hereby amended to read as follows:

445B.737 As used in NAC 445B.737 to 445B.774, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.739 to 445B.762, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. NAC 445B.739 is hereby amended to read as follows:

445B.739 “Certification level” means the maximum allowable level of opacity for a diesel engine with a ~~[1977]~~ 1970 or newer model year, as set by the commission in NAC 445B.7665.

Sec. 4. NAC 445B.746 is hereby amended to read as follows:

445B.746 “Emission control system” means the components for controlling pollution that are present on an engine at the time that model of engine is certified. ~~[The]~~ *For a heavy-duty motor vehicle powered by a diesel engine, the* term includes the emission control label.

Sec. 5. NAC 445B.762 is hereby amended to read as follows:

445B.762 “Test procedure” means the processes of the preconditioning sequence and the measurement of the opacity of smoke to determine whether a vehicle meets the **relevant** standard of opacity set forth in NAC 445B.7665.

Sec. 6. NAC 445B.7665 is hereby amended to read as follows:

445B.7665 ~~[No]~~

1. Except as otherwise provided in this section and NAC 445B.774, no owner or driver of a heavy-duty motor vehicle *powered by:*

(a) A 1991 or newer model-year engine may cause or permit the discharge into the atmosphere of engine exhaust from the vehicle which is of an opacity ~~[equal to or]~~ greater than ~~[70]~~ **40** percent.

(b) A 1977 to 1990 model-year engine may cause or permit the discharge into the atmosphere of engine exhaust from the vehicle which is of an opacity greater than 55 percent.

(c) A 1970 to 1976 model-year engine may cause or permit the discharge into the atmosphere of engine exhaust from the vehicle which is of an opacity greater than 70 percent.

2. A vehicle will not be cited as violating any smoke opacity standard listed in subsection 1 unless the opacity reading is at least 1 full percentage point greater than the relevant standard.

3. Before July 1, 2003, the director may authorize opacity testing that uses equipment for the measurement of smoke opacity without the built-in capability to adjust the opacity readings to take ambient conditions into consideration as required by the Society of Automotive Engineers Procedure, SAE J1667, “Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles.” If the smoke opacity of a heavy-duty motor vehicle is tested using equipment authorized for use by the director pursuant to this subsection, the owner or driver of a heavy-duty motor vehicle is not in violation of the provisions of subsection 1 unless the discharge into the atmosphere of engine exhaust is of an opacity greater than 70 percent. On and after July 1, 2003, only equipment that has the built-in capability to adjust the opacity readings to take ambient conditions into consideration as required by the Society of Automotive Engineers

Procedure, SAE J1667, “Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles,” may be used to measure smoke opacity.

4. A family of engines that has been exempted by the California Air Resources Board pursuant to section 2182(b) of Title 13 of the California Code of Regulations is not subject to the standards set forth in subsection 1. Such a family of engines is subject to the technologically appropriate less stringent opacity standard identified by the Executive Director of the California Air Resources Board pursuant to section 2182(b) of Title 13 of the California Code of Regulations, for that family of engines, plus 5 percentage points.

Sec. 7. NAC 445B.767 is hereby amended to read as follows:

445B.767 1. Equipment for the measurement of smoke opacity must meet the specifications set forth in section ~~[-4]~~ **6** of the Society of Automotive Engineers Procedure, SAE J1667, Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles.

2. The test procedure must comply with the provisions of section ~~[-3]~~ **5** of SAE J1667, including the preparation phase and preconditioning phase set forth in subsections 1, 2 and 3 of section ~~[-3]~~ **5** of SAE J1667.

~~[3. As used in this section, “test opacity” means the smokemeter measurement of opacity to determine compliance with the standard of opacity set forth in NAC 445B.7665.]~~

Sec. 8. NAC 445B.768 is hereby amended to read as follows:

445B.768 1. During an inspection of an emission control system, the components for emission control for heavy-duty motor vehicles powered by diesel engines that are subject to inspection for tampered or defective conditions include:

- (a) The engine governor.
- (b) Any seal or cover protecting the adjustments to control the ratio of air to fuel.
- (c) Any seal or cover on the fuel injection pump.
- (d) The air cleaner and the indicator of the restriction of flow.
- (e) The exhaust gas recirculation valve.
- (f) The particulate matter trap system or catalytic converter system, including related pipes and valves.
- (g) Any hose, connector, bracket or hardware related to the components listed in paragraphs (a) to (f), inclusive.
- (h) Engine computer controls, including related sensors and actuators.

- (i) The emission control label.
- (j) Any other components related to emissions for a particular vehicle or engine as determined from the manufacturer's specifications, emission control label, certification data or a published manual of parts for the vehicle.

2. During an inspection of an emission control system, the components for emission control for a heavy-duty motor vehicle powered by a gasoline engine that are subject to inspection for tampered or defective conditions include:

- (a) The air injection system.
- (b) ~~[The positive crankcase ventilation system.]~~
- ~~(c)~~ The exhaust gas recirculation system.
- ~~(d)~~ (c) The catalytic converter, including related pipes and valves.
- ~~[(e) The control system for evaporative emissions]~~
- ~~—(f)~~ (d) *The fuel inlet restricter.*
- (e) *The fuel inlet cap, if the motor vehicle was originally equipped by the manufacturer with such a cap.*
- (f) Any hose, connector, bracket or hardware related to the components listed in paragraphs (a) to (e), inclusive.

- ~~/(g) Engine computer controls, including related sensors and actuators.~~
- ~~(h) The on-board diagnostic system for a vehicle with a 1994 or newer model year, if the vehicle is equipped with such a system.~~
- ~~—(i) The emission control label.~~
- ~~(j) Any other component related to emissions for a particular vehicle or engine as determined from the manufacturer's specifications, emission control label, certification data or a published manual of parts for the vehicle.]~~

3. As used in this section, "defective" means an emission control system or a component of an emission control system that is malfunctioning due to age, wear, faulty maintenance or a defect in design.

Sec. 9. NAC 445B.771 is hereby amended to read as follows:

445B.771 1. An owner of a vehicle who has been issued a citation may demonstrate correction of the vehicle by:

- (a) Submitting to the director a receipt evidencing repair from a repair facility or a completed work order from a fleet repair facility or a fleet maintenance facility. The receipt or work order must include:

(1) The name, address and telephone number of the facility;
(2) The name of the mechanic;
(3) The date of the repair;
(4) A description of any repair or adjustment made to the vehicle; and
(5) An itemized list of all replaced components, including a description of the part, number of the part and the cost of the part.

(b) Submitting the vehicle to a post-repair test or a post-repair inspection.

2. The director shall require a post-repair test or post-repair inspection if:

(a) A submitted receipt evidencing repair or a submitted work order does not meet the requirements of paragraph (a) of subsection 1;

(b) A receipt or work order appears to be falsified; or

(c) A second or subsequent failure of either part of an inspection procedure on the vehicle occurs within 1 year after the most recent citation was issued.

3. As used in this section, “post-repair inspection” means a subsequent inspection of an emission control system for the purpose of determining compliance of a vehicle that has been cited for violating **[the] a** standard of opacity set forth in NAC 445B.7665.

Sec. 10. NAC 445B.774 is hereby amended to read as follows:

445B.774 1. The director may grant a waiver from **[the] a** standard of opacity set forth in NAC 445B.7665.

2. Except as otherwise provided in this ~~**[subsection,]**~~ **section**, an application for a waiver must include a receipt or receipts or other evidence that at least \$1,000 has been spent on parts other than a catalytic converter, fuel inlet restrictor air injection system, exhaust gas recirculation valve, fuel cap or particulate matter trap system, or on labor other than emission testing if the repairs evidenced by the receipt were directly related to the deficiency in emissions.

3. If the vehicle is repaired by the owner, the application must include a receipt or receipts or other evidence that at least \$750 has been spent on parts other than a catalytic converter, fuel inlet restrictor, air injection system, exhaust gas recirculation valve, fuel cap or particulate matter trap system and that the parts were purchased within 15 days after the initial test or inspection. No allowance will be made toward the \$750 requirement for labor on a vehicle repaired by its owner.

4. The director shall deny an application for a waiver if the parts have not been installed or the repairs have not been performed as indicated on the receipt or receipts presented to the director.

5. A vehicle that qualifies for repairs under a warranty is not eligible for a waiver.
6. *A waiver is valid for 1 year after the date it is issued.*

Sec. 11. NAC 445B.7655 is hereby repealed.

TEXT OF REPEALED LANGUAGE

445B.7655 Issuance of citation on or before January 1, 1997: Prohibition of administrative fine. A citation issued by the department on or before January 1, 1997, for a violation of the provisions of NAC 445B.737 to 445B.774, inclusive, must not be accompanied by an administrative fine.

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